IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
NOTICE OF MOTION NO.1851 OF 2006
IN
APPEAL NO.354 OF 2006
IN
NOTICE OF MOTION NO.1255 OF 2003
IN
SUIT NO.784 OF 2003

Dilip Eknath Pandit ..Appellant.
Vs.
Arvind Eknath Pandit & Ors. ..Respondents.
....
Shri I.R. Kulkarni for the Appellant.
Shri Hemant Ghadigaonkar i/b A.G. Damle for Respondent No.2.
....

CORAM: **R. M. S. KHANDEPARKAR, &**
DR. D.Y. CHANDRACHUD, JJ.

9th March, 2007.

P.C. :

Heard.

Considering the pleadings of the parties and the materials on record, it is undisputed fact that till 1991 the Respondents continued to reside in the joint family property and had no independent source of income. Prima facie therefore it is established that the properties purchased by the Respondents particularly prior to 1992 were purchased out of the family funds. It is further case of Respondent No.2 himself in his affidavit in reply

filed to the Notice of Motion that the property which was purchased on 12th August, 1996 was out of the funds raised from sale of the property which was purchased under the deed dated 3rd November, 1998. Obviously, therefore prima facie it is revealed that all the properties purchased are purchased out of the family funds and there was no independent source of income to the Respondents to purchase the said properties. The facts stated in the affidavit in reply also disclose that meanwhile the Respondents have sought to create third party interest in some of the properties. In the circumstances, the Appellant is justified in contending that in the interest of justice the parties be directed to maintain status quo in relation to all the properties including properties described in Schedules A to G. Since some third party interests have been created and their identity has been disclosed in the affidavit in reply, liberty to the Appellant to join those parties as Defendants in the suit and the Respondents in the Appeal. With this observation, the Notice of Motion is made absolute in terms of prayer clause (a).

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)